LEE TAT REALTY PTE. LTD.

v.

HONGKONG & SHANGHAI BANK (SINGAPORE) NOMINEES PTE. LTD.

HIGH COURT, SINGAPORE
FA CHUA J
[SUIT NO. 799 OF 1982]
7 OCTOBER 1986

TORT: *Negligence - Wilful disregard of instructions to sell shares - Whether defendants had negligently and wilfully sold shares contrary to plaintiffs' instructions - Whether 23 January 1981 and/or 26 January 1981 letter constitute a notice to defendants of revocation of plaintiff's instructions contained in letter of 22 January 1981 to sell the 100,000 UOB shares.*

The plaintiffs' claim is for the sum of $182,015.55 and damages for negligence. The plaintiffs pleaded that the defendants had negligently sold the 100,000 UOB shares on 26 and 27 January 1981, after receipt of notices that the plaintiffs had already sold by themselves 100,000 UOB shares on 22 January 1981 and another 100,000 shares on 23 January 1981. Alternatively the plaintiffs pleaded that the defendants had wilfully disregarded the 23 January 1981 letter and/or 26 January 1981 letter and the three contract notes therein and contrary to the instructions in those letters, had negligently or wilfully sold contrary to the plaintiffs' instructions, 100,000 UOB shares or alternatively 56,000 UOB shares through Sassoon.

The gist of the defence is that the 23 January 1981 letter did not constitute a notice of revocation and that the 26 January 1981 letter does not amount to sufficient communication of the revocation.

Held:

[1] The plaintiffs' claim that JC Tan, the plaintiffs' manager, met Mr. G.J. Adams the securities manager of the defendants on the morning of 26 January 1981 and personally delivered the 26 January 1981 letter to Adams is not true because JC Tan's statement has little evidential value for it contains lies and inaccuracies.

[2] The 23 January 1981 letter cannot reasonably be construed as a notice of revocation of plaintiffs' instructions because it makes no reference to the 21 January 1981 letter. It bears a different heading, has a different letter reference and refers to different sale price.

[3] The 26 January 1981 letter was a routine delivery order and it did not convey to G.J. Adams of the defendants that the plaintiffs intended to revoke the instructions in the 22 January 1981 letter. Moreover, the plaintiffs had retracted the 26 January 1981 letter in their letter of 26 March 1981 and it cannot now be relied upon as a notice of revocation.

[4] G.J. Adams of the defendants did not have the opportunity to cancel his orders with Sassoon in time and the oversale of shares was directly caused by the action of the plaintiffs.

[5] For the reasons stated above, the plaintiffs had failed to prove that the defendants had been negligent.

[Plaintiffs' claim dismissed with costs.]

For the plaintiffs - K.S. Chung
For the defendants - C.S. Wu

JUDGMENT

FA Chua J:

The plaintiffs' claim against the defendants is for the sum of $182,015.55 and damages for negligence.

The facts are these. The defendants are professional trustees and nominees carrying on business in Singapore. In consideration of the defendants, at the request of the plaintiffs, agreeing from time to time for a fee or charge, to act for and on behalf of the plaintiffs in relation to their securities delivered to the defendants, the plaintiffs duly delivered to the defendants as such trustees and nominees 219,614 shares in United Overseas Bank Ltd. ("UOB") to dispose of or otherwise deal with the same on the instructions of the plaintiffs or other persons duly authorised in that behalf.

By letter dated 22 January 1981, the plaintiffs instructed the defendants to dispose of on their behalf 100,000 out of the said 219,614 UOB shares at the minimum price of $4.84 per share. By this letter, the plaintiffs required the defendants to inform them by telephone, followed by writing, immediately after the said 100,000 UOB shares had been sold and to credit the proceeds of sale to the plaintiff's Current Account No. 141-160069-001 with the Hong Kong & Shanghai Banking Corporation ("the plaintiffs' said account") after the sale.

On 22 January 1981, the plaintiffs sold 100,000 UOB shares and on 23 January 1981, ("23 January 1981 letter") the plaintiffs wrote to the defendants informing them that the 100,000 UOB shares had already been sold through Alliance Securities (Pte.) ("Alliance") at the price of $4.80 per share. The plaintiffs enclosed in the letter two contract notes of Alliance nos. SHK944X and SHK945X for the defendants' immediate attention and requesting the defendants to credit the proceeds of sale to the plaintiffs' said account.

On 23 January 1981, the plaintiffs sold another lot of 100,000 UOB shares through Alliance at the price of $4.80 per share. On 26 January 1981, ("26 January 1981 letter") the plaintiffs wrote to the defendants informing them that a further 100,000 UOB shares had already been sold through Alliance at the price of $4.80 per share and forwarded a contract note of Alliance No. SHL-134, for the defendants' immediate attention and action and requesting the defendants to credit the proceeds of sale to the plaintiffs' said account.

The defendants sold 44,000 UOB shares of the plaintiffs on 26 January 1981, at the price of $4.84 per share (Contract No. 093502/501) and another 56,000 UOB shares of the plaintiffs on 27 January 1981, at the price of $4.84 per share (Contract No. 093843/501) both sales through J.M. Sassoon & Co.(Pte.) Ltd. ("Sassoon").

The first lot of 100,000 UOB shares of the plaintiffs the subject of Alliance contracts SHK944X and SHK945X were duly delivered by the defendants to Alliance against payment by Alliance of the proceeds of sale on 27 January 1981.

The second lot of 100,000 UOB shares of the plaintiffs the subject of Alliance contract SHL-134 were not delivered by the defendants to Alliance. The plaintiffs were sued by Alliance in suit No. 3051 of 1981 and Alliance's claim was settled by the plaintiffs paying $182,015.55.

The plaintiffs pleaded that the defendants had negligently sold the 100,000 UOB shares on 26 and 27 January 1981, after the receipt of notices that the plaintiffs had already sold by themselves 100,000 UOB shares on 22 January 1981, and another 100,000 UOB shares on 23 January 1981. Alternatively, that the defendants had wilfully disregarded 23 January 1981 letter and/or 26 January 1981 letter and the three contract notes therein and contrary to the instructions in those letters, had negligently or wilfully sold contrary to the plaintiffs' instructions, 100,000 UOB shares or alternatively 56,000 UOB shares through Sassoon.

The plaintiffs pleaded that by reason of the defendants' negligence and/or their wilful disregard of the plaintiffs' instructions in 23 January 1981 letter and/or 26 January 1981 letter, they have suffered loss and damages.

The plaintiffs' claim of negligence is based on these grounds:

(a) The 23 January 1981 letter constituted a notice of revocation of their instructions contained in their letter of 22 January 1981 (AB1);

(b) Alternatively, 26 January 1981 letter also constituted a notice of revocation of their instructions in AB1;

(c) The 26 January 1981 letter was handed by Mr. JC Tan, the plaintiffs' manager personally to Mr. G.J. Adams, the securities manager of the defendants, on the morning of 26 January 1981; notwithstanding this letter Adams told Tan that "he could not cancel their instructions as he had already given instructions to his brokers."

Did 23 January 1981 letter and/or 26 January 1981 letter constitute a notice to the defendants of the revocation of the plaintiffs' instructions contained in the letter of 22 January 1981, to sell the 100,000 UOB shares?

It is necessary to set out the letter AB1, 23 January 1981 letter and 26 January 81 letter:

Date: 22 January 1981.

Attn: Mr. G.J. Adams

Dear Sirs,

Sale of United Overseas Bank Ltd.'s shares

Please be informed that we have 219,614 UOB shares held by you as Nominees under Security Account No. 141-160069-085.

We hereby instruct and authorise you to dispose on our behalf 100,000 shares at a minimum rate of S$4.84 per share. Please do not proceed with the sale if the rate is less than S$4.84 per share unless further instructions and authorisation are obtained from us.

Please inform us by telephone followed by writing immediately after the aforesaid shares have been sold.

Kindly credit the proceeds of the sale to our Current Account No. 141-160069-001 with the Hongkong & Shanghai Banking Corporation immediately after the successful sale of the shares.

Thanking you for your kind attention.

Date: 23 January 1981

Dear Sirs

Sale of 100,000 UOB Shares

Please be informed that the above shares have already been sold through the broker Messrs. Alliance Securities (Pte.) at a rate of S$4.80 per share via Contract No. SHK944X and SHK945X amounting to a total sum of S$480,000.

We enclose herewith the 2 original copies of the aforesaid Contract Notes for your immediate attention and action.

Kindly therefore credit the proceed to our Current Account No. 141-160069-001.

Thanking you for your kind attention.

26 January 1981.

Attn: Mr. G.J. Adams

Dear Sirs,

Sale of 100,000 UOB shares

Please be informed that the above shares have already been sold through the broker Messrs. Alliance Securities (Pte.) Ltd. at a rate of S$4.80 per share via Contract No. SHL134 amounting to a total sum of S$480,000.

We enclose herewith the original copy of the aforesaid Contract Note for your immediate attention and action.

Kindly therefore credit the proceed to our Current Account No. 141-160069-001.

Thanking you for your kind attention.

There is conflict of evidence as to whether 26 January 1981 letter was personally handed by JC Tan to Adams on the morning of 26 January 1981, as maintained by the plaintiffs.

The plaintiffs were unable to call Tan to give evidence as at the date of the resumed hearing he was not in Singapore but in China, and on the application of the plaintiffs Tan's statement taken on 27 April 1983, was admitted in evidence (Exh. P5).

In his statement Tan said that before 9 a.m. on the morning of 26 January 1981, (a Monday) 26 January 1981 letter was prepared and he immediately rushed down to the defendants' office to hand that letter personally to Adams. When he arrived at the defendants' office the banking hall was not even open yet and he went to Adams' office through another entrance. When he saw Adams he handed the letter to him which letter was not sealed and orally informed him that plaintiffs had sold another 100,000 UOB shares. Adams then told him "that he (Adams) could not cancel our instructions as he had already given instructions to his brokers". He then informed Adams that he would discuss the matter with Mr. Tan Geok Tee (general manager of the plaintiff company). When he got back to the office he informed Mr. Tan Geok Tee what Adams had told him.

Mr. Tan Geok Tee said in evidence (during cross-examination) that JC Tan informed him that 26 January 1981 letter was handed by him personally to Adams; and that according to JC Tan when he went to the reception counter and asked to see Adams he was referred to Adams. He said that it was not true that JC Tan met Adams only on 27 January 1981. He said that there was no meeting on 27 January.

The evidence of Adams as to 26 January 1981 letter is this. The allegation that this letter was handed personally to him on the morning of 26 January 1981, by JC Tan before the commencement of banking hours is not true. To the best of his recollection he would have seen this letter on the morning of 27 January 1981. He explained the procedure as regards letters received by the defendants. He said that the letter AB1, as it came across the counter and not through the mail, would be handed direct to himself by the staff on the counter for further action; not because it was specifically addressed to him but because it was a letter asking the defendants to sell shares. The 23 January 1981 letters was not addressed to his attention. It was delivered across the counter. As this letter was a request to deliver shares to a broker, it would be handed by the counter section to the vault section where the shares were kept; vault section would go through the process of checking through the details of the letter to see if the shares were under lien to the bank; in this case they were; vault section would forward 23 January 1981 letter to the credit department, without the scrip, for them to satisfy themselves that the shares could be released, that there were sufficient

securities to cover the advances; if credit is satisfied they would OK the release on the letter, then the letter would be returned by the credit department to vault section which would proceed to withdraw the shares and release the shares to him in the securities department for final authorisation of release. If everything is in order he would sign the withdrawal voucher authorising the release of the shares. The shares would go to the delivery section and they would attend to the deliveries by telephoning Alliance.

As regards 26 January 1981 letter, its movements would be the same as that of 23 January 1981 letter, and he did not see 26 January 1981 letter until the morning of 27 January 1981. He said that the fact that this letter was addressed to his attention would not affect the movements of the letter.

There were a number of notations made on 26 January 1981 letter. The first notation was "OK provided 19614 shares are left under lien to us"; this, according to Adams, was initialled by an officer in the credit department on 27 January 1981. Adams said this notation would come after the letter had gone to the Vault section for the first time. The second notation was "They have oversold and will be settling direct with brokers. Cancel this instruction" and Adams said this was initialled by him, and to his recollection the correct date of his notation would be 27 January 1981 Adams said that between the credit department notation and his notation, this letter would have gone back to the Vault section before coming to him. The third notation was "contract cancelled per Mr. Adams' instruction 27 January 1981" and was initialled by the vault supervisor Clive Phillips. The fourth notation was the crossing out of the letter and initialled by Phillips and dated 27 January 1981. The fifth notation was "contract note returned to them per their 1/o (letter of) 26 March 1981 ref JCT/tmj-81/0484" and made by Adams in his own handwriting. After that the crossing out of the letter by Adams and initialled by him. It signifies the cross out was the final use made of the letter prior to filing the letter.

It seems to me that the statement of JC Tan (Exh. P5) has little evidential value. We do not know the circumstances under which it was recorded. His statement is at variance with the evidence of Tan Geok Tee on certain points and contains lies and inaccuracies. The statement of Tan is that he saw Adams on the morning of 26 January 1981, and handed him 26 January 1981 letter and that Adams refused to cancel his instructions to Sassoon. If this statement is true, why did not the plaintiffs protest? They raised no objections but instead they wrote on 26 March 1981, to the defendants (AB15) to retract 26 January 1981 letter and the contract note no. SHL 134 of Alliance and requested the defendants to return to them the letter and the contract note. This letter appears to have been signed by JC Tan and the letter reference bears the initial "JCT".

On the evidence adduced I have come to the irresistible conclusion that the plaintiffs' claim that JC Tan met Adams on the morning of 26 January 1981 and personally delivered 26 January 1981 letter to Adams is not true.

Was there an intention on the part of the plaintiffs to revoke the instructions in AB1 when they sent to the defendants 23 January 1981 letter? The letter makes no reference to AB1, it bears a different heading, has different letter reference and refers to different sale price. In their letter of 26 January 1981 to the defendants (DB14) the plaintiffs used identical format and language as 23 January 1981 letter when informing the defendants that they had already sold through Alliance 50,000 OCBC shares, yet no one in plaintiff company, according to Adams, had ever alleged that the letter DB14 had affected partial revocation of their instructions to the defendants contained in their letter of 22 January 1981 (DB10) to sell 100,000 OCBC shares out of the 369,940 OCBC shares held by the defendants as trustees.

The format and language of DB14 and AB1 are similar. On 28 January 1981, the plaintiffs wrote to the bank with reference to their overdraft account (Exh. D1) and in that letter they stated that they had sold (*inter alia*) 100,000 UOB shares through the defendants on 27 January 1981. On 30 January 1981, the plaintiffs wrote to the bank with reference to the sale of shares (DB22), and in that letter they again set out that 100,000 UOB shares had been sold on 27 January 1981, through the defendants. These two letters clearly show that the plaintiffs were accepting the sale by the defendants of the 100,000 UOB shares on 27 January 1981, and in fact were anxious to receive the benefit of the sale of the UOB shares transacted by the defendants. Clearly there was no intention on the part of the plaintiffs to revoke the AB1 instructions.

The 23 January 1981 letter, in my view, cannot reasonably be construed as a notice of revocation. As I have said the letter makes no reference to AB1, it bears a different heading, has different letter reference and refers to different sale price. The defendants held 219,614 UOB shares for the plaintiffs. Adams' conclusion that the plaintiffs had sold a separate lot of 100,000 UOB shares was natural and justified and a correct conclusion.

I do not think that the word "already" held any special significance. The plaintiffs had used the same word in their correspondence with the defendants on 28 January 1981, (Exh. D1); in their letter of 23 January 1981, (DB11), when they informed the defendants that they had "already" sold through Alliance 50,000 OCBC shares; in their letter of 26 January 1981, (DB14), to the defendants (attention Adams), that they had "already" sold through Alliance 50,000 OCBC shares, and in their letter of 30 January 1981, (DB22), to the defendants (attention Adams) that they had "already" sold through Alliance and the defendants a number of shares.

I find that 23 January 1981 letter did not constitute a notice of revocation of AB1 instructions.

As to 26 January 1981 letter Counsel for the defendants readily concedes that the plaintiffs might well have intended it to be a revocation of the AB1 instructions, but says that intention alone does not make a revocation, it must be communicated. He submits that 26 January 1981 letter does not amount to sufficient communication of revocation.

The plaintiffs try to put the blame on the bank for not ensuring that 26 January 1981 letter came to Adams' prompt attention on 26 January 1981. The 26 January 1981 letter did not refer to the letter AB1 and it did not contain an instruction to cancel the AB1 instructions. The plaintiffs had worded the letter as a routine delivery order and in consequence it was processed by three other sections of the bank before it reached the eyes of Adams. Had 26 January 1981 letter contained an instruction to cancel the AB1 instructions it would have gone direct to Adams.

Adams' evidence was that after he read 26 January 1981 letter on 27 January 1981, at about 11 a.m. and realising that there might be an oversale, he telephoned Sassoon and was told that a section of the UOB shares had been sold the previous evening and the remainder had been sold some hour or half-an-hour before his call. He was not aware of these sales until this conversation with Sassoon. He immediately telephoned and spoke to JC Tan and gave a brief description of the situation and advised that there appeared to be a double sale. He told JC Tan that as the plaintiffs had not cancelled the sale order given to the defendants, the plaintiffs' act in selling the shares independently had been incorrect and that the defendants could not deliver on their sale order under 26 January 1981 letter as the defendants required the shares to settle the transactions made by the defendants on their behalf. JC Tan made no protest. He did not at that time accuse the defendants of any default. JC Tan requested a meeting with Adams and he came to see Adams shortly after. At the meeting JC

Tan asked Adams what was the best solution to the problem. He advised that the plaintiffs should attempt to meet the Alliance contract SHL134 either with other shares plaintiffs had in defendants' possession or they should approach Alliance to carry out an immediate buy back a parcel similar to the one sold. JC Tan made no specific agreement or disagreement; he thanked Adams for his advice and left. At this meeting JC Tan did not accuse the defendants of any fault or lack of responsibility, nor did he claim that the AB1 instructions had been cancelled prior to the defendants' sale of the plaintiffs' shares.

Adams' evidence is supported by the contemporaneous notations appearing in 26 January 1981 letter, as well as his reference to his conversation with JC Tan on 27 January 1981, that 44,000 UOB shares were sold on 26 January 1981, and 26,000 UOB shares on 27 January 1981, in his letter to the plaintiffs dated 15 June 1981, (AB27). The plaintiffs in their lengthy reply of 22 June 1981, (AB28), did not deny Adams' reference to the verbal advice to JC Tan of the sales. In all of plaintiffs' letters to the defendants not once did they accuse Adams of refusing to cancel his sale instructions to Sassoon even though he had the time and opportunity to do so.

Adams did not have the opportunity to cancel his order with Sassoon in time. The oversale of shares was directly caused by the action of the plaintiffs. They had instructed the defendants as well as Alliance to sell the same parcel of shares without letting either side know that they had done so. This immediately exposed them to a possible double sale. The plaintiffs could easily have telephoned Adams on Friday 23 January 1981, to inform Adams of the sale that had taken place that day.

Tan Geok Tee said that a copy of the letter from the defendants to Sassoon confirming their verbal instructions to sell 100,000 UOB shares at $4.84 (AB2) was received by the plaintiffs on 27 January 1981, and that he came to know of the sales to Sassoon only when he received the two contract notes of Sassoon on 3 February 1981.

The evidence of Tan Geok Tee cannot be true. In the plaintiffs' letter of 28 January 1981, to the bank (Exh. D1) where they informed the bank that they had already sold the shares listed in the letter of UOB and OCBC shares through Alliance and the bank there was in the list the sale on 27 January 1981, of 100,000 UOB shares at $4.84 through the bank. And again in their letter of 30 January 1981, to the bank (DB22) the sale on 27 January 1981, by Sassoon of 100,000 UOB shares at $4.84 was listed. These two letters of the plaintiffs is clear evidence of the acceptance by the plaintiffs of the sale by Sassoon on 27 January 1981. As I have said the plaintiffs fully intended to receive the financial benefits of that sale. There was no possibility of the plaintiffs intending at the time they wrote Exh. D1 and DB22 that the AB1 instructions should be revoked.

It is also clear that the statement of JC Tan in Exh. P5 that he only came to know of the Sassoon's sales on 31 January 1981, is not true.

The 26 January 1981 letter was a routine delivery order and it did not convey to Adams that it intended to revoke the AB1 instructions. In any event the plaintiffs as I have said retracted 26 January 1981 letter of 26 March 1981, (AB15) and cannot now rely on it as a notice of revocation.

The plaintiffs have failed to prove that the defendants have been negligent.

The plaintiffs' claim is dismissed with costs.

Also found at [1987] 1 CLJ 505